

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

In re Damon B., A Person Coming Under  
the Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN  
& FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

A.B.,

Defendant and Appellant.

A155664

(Contra Costa County  
Super. Ct. No. J17-00310)

In this dependency appeal, A.B. (mother) challenges juvenile court orders denying her modification petition (Welf. & Inst. Code,<sup>1</sup> § 388) and terminating her parental rights (§ 366.26) with respect to her youngest son, Damon M. (born 2017). Mother's sole claim on appeal is that the juvenile court abused its discretion in denying her modification petition seeking additional reunification services. We conclude the juvenile court did not abuse its discretion and affirm.

**I. BACKGROUND**

Damon's four older siblings—D.B. (born 2003), Z.B. (born 2006), J.B. (born 2013), and I.B. (born 2015)—were detained by the Contra Costa County Children & Family Services Bureau (Bureau) in March 2016 due to dangerous conditions in the

---

<sup>1</sup> All statutory references are the Welfare and Institutions Code unless otherwise specified.

family home. The police conducted a welfare check because the older children had not been in school for three weeks, and they discovered all four minors at home with no adult supervision, human and animal fecal matter and old food strewn about the house, a butcher knife on a bed within reach of the children, and a stove burner lit with a visible flame. The children were dirty, the younger ones with soiled diapers, and there were no clean clothes or shoes in the house. When mother arrived home, she was arrested for child endangerment and the minors were taken into protective custody. All four children were formally removed from mother's custody and reunification services were ordered. Mother had difficulty complying with her reunification plan. She attended only a fraction of her required individual therapy sessions and failed to participate in the medication assessment recommended by her psychological evaluation. Although she had attended a number of parenting classes, the Bureau remained concerned that mother was not demonstrating the skills and behaviors necessary to parent her children.

Damon was detained by the Bureau shortly after his birth in 2017, based on mother's severe neglect of her older children, her failure to follow through with a number of family reunification requirements in the sibling case, and her marijuana use while pregnant with Damon.<sup>2</sup> Mother denied any substance abuse history, despite testing positive for marijuana at Damon's birth. At the conclusion of a contested jurisdictional hearing in April 2017, Damon was found to be a child described by subdivisions (b) and (j) of section 300.

A dispositional hearing was held on May 12, 2017, at which Damon was declared a juvenile court dependent and formally removed from mother's care. Prior to that hearing, mother had participated in several mental health assessments and had been diagnosed with anxiety disorder, mood disorder, and posttraumatic stress disorder. Mother, however, informed her most recent evaluator that she did not want or need psychiatric medication and insisted she had no substance abuse problems. The

---

<sup>2</sup> Damon's alleged father, D.J., has not been involved in these proceedings. His parental rights were terminated at the permanency planning hearing in October 2018, and he has not appealed from the termination order.

reunification services ordered by the juvenile court therefore included only participation in individual therapy and random drug testing. The Bureau encouraged mother to continue monitoring and prioritizing her mental health needs and stated: “Central to this case is [mother’s] history of noncompliance with her Case Plan. The undersigned cannot stress [enough] the importance of committing to attending her weekly therapy and random drug testing.”

As of October 2017, mother was regularly attending individual therapy and was making progress, but had been skipping drug tests for several months. Mother continued to deny having any mental health issues and using marijuana during her pregnancy. She accused the foster parent of physically abusing Damon and the social worker and health care providers of conspiring to cover up the abuse, despite repeated reassurances from the social worker and doctors that the child was well. Mother also made several bizarre claims, including that she would save Damon’s urine-soaked diapers after visits because he had been removed from her. The social worker expressed concern about mother’s “ability to process situations [with Damon] rationally” and mother’s “ability to regulate her emotions and cope during times of stress as well as her issues of mistrust.” The Bureau recommended that reunification services be continued, but stressed it was “imperative” for mother to fully engage in her services, including substance abuse testing. The minor’s foster parents indicated a desire to adopt Damon, should reunification efforts fail.

After several continuances, a review hearing occurred on June 13, 2018, as a combined six- and 12-month review. Prior to the hearing, the Bureau filed several additional updates. Mother’s visitation with Damon, drug testing, and attendance in individual therapy sessions had been sporadic, but by June 2018, mother was again visiting regularly and consistently engaged in individual therapy. However, since March 2018, mother had tested negative six times, failed to appear seven times, and tested positive for cocaine in May 2018. Mother was unable to explain this positive test. At the contested hearing, the juvenile court found that reasonable reunification services had been provided to mother, terminated those services, and set the matter for a hearing

pursuant to section 366.26 so that a permanent out-of-home plan could be developed for Damon. Mother did not seek appellate review of this decision.

On October 3, 2018, mother filed a petition pursuant to section 388, requesting modification of the juvenile court's prior order terminating her reunification services and setting a permanency planning hearing for Damon. Mother reported that she had entered a 90-day residential substance abuse treatment program on September 10, 2018, and was in full compliance with the program through its first 30 days. She argued that she had always had loving visits with Damon and that the additional services would allow Damon to reunify and grow up in a household with mother and his four older brothers. The Bureau opposed mother's petition. It argued that, although mother had been diligently offered services for over two years in both of her open dependency actions, she had failed to engage in those services on a consistent basis and, in fact, had recently tested positive for cocaine in both May and July 2018. Although mother's weekly supervised visitation had generally been appropriate throughout the course of these proceedings, at times mother exhibited worrisome behaviors, failed to make eye contact with the minor, showed a lack of understanding regarding Damon's needs, or had to be instructed to stay focused on the minor. Moreover, Damon had never lived with mother and was attached to his prospective adoptive parents, making any further attempts at reunification contrary to his best interests.

The juvenile court agreed with the Bureau. On October 10, 2018, after admission of documentary evidence<sup>3</sup> and argument, the juvenile court denied mother's modification request, finding both that there was not a true change in mother's circumstances and that the proposed modification would not be in Damon's best interests. Immediately thereafter, the juvenile court considered evidence and argument with respect to permanency planning for Damon. Finding the minor adoptable and the beneficial relationship and sibling exceptions to adoption inapplicable, the court terminated parental

---

<sup>3</sup> Documents submitted by the Bureau indicated that, prior to her entry into residential treatment, mother failed to test twice and had an additional positive test in August 2018.

rights and identified adoption as Damon’s permanent plan. Mother appeals from the court’s denial of her petition.

## II. DISCUSSION

Section 388 allows interested parties to petition for a hearing to change or set aside a prior court order on the grounds of “change of circumstances or new evidence.” (§ 388, subd. (a)(1).) The burden of proof at any such hearing is on the moving party to show by a preponderance of the evidence both that there are changed circumstances or new evidence and that a change in court order would be in the best interests of the child. (See § 388, subd. (b); *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re D.B.* (2013) 217 Cal.App.4th 1080, 1089.) “To support a section 388 petition, the change in circumstances must be substantial.” (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223.) A mere showing of “changing circumstances” is insufficient. (*In re A.S.* (2009) 180 Cal.App.4th 351, 358.) A ruling on a section 388 petition is “committed to the sound discretion of the juvenile court, and the [juvenile] court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established.” (*Stephanie M.*, at p. 318.) “Thus, we may not reverse unless the juvenile court exceeded the bounds of reason, and we have no authority to substitute our decision for that of the lower court where two or more inferences can reasonably be deduced from the facts.” (*D.B.*, at p. 1089.)

Here, mother asserts that the juvenile court abused its discretion in denying her modification request because she showed significant changed circumstances—successful engagement in residential substance abuse treatment. Mother argues that substance abuse was the “real” problem in this dependency proceeding and finds it “remarkable” that the juvenile court had not ordered her to engage in substance abuse treatment despite the sustained allegation in the petition she had used marijuana while pregnant with Damon. Had she been referred to treatment as part of her reunification plan, it is possible she would have recovered sooner and been in a position to reunify with Damon. At the very least, mother contends, her 30 days of successful residential treatment should be viewed with significance because she voluntarily entered the program even though it had not been a requirement of her case plan.

Mother acknowledges she cannot challenge the juvenile court's findings in this case that reasonable services were provided, which have long-since become final. (*In re T.G.* (2010) 188 Cal.App.4th 687, 692 [parent may generally not attack prior orders where statutory time for seeking appellate review has passed].) Her indirect attack of the court's prior orders fares no better. Mother overlooks that she denied any substance abuse for nearly the entirety of these proceedings and repeatedly disregarded the court's order to submit to random drug testing. Had she engaged consistently in drug testing and other requirements of her case plan, any substance abuse concerns could have been ferreted out at an earlier stage. Instead, as late as March 2018, mother's attorney suggested the testing requirement be lifted because the only substance ever at issue was marijuana and that was no longer a problem. Even after her positive test for cocaine in May 2018, mother denied substance abuse. Although we commend mother for her recent decision to enter residential treatment, we decline her invitation to blame the juvenile court for her own failure to take advantage of counseling and services when they were offered to her.

The juvenile court acted well within its discretion in denying mother's section 388 petition. After four failed drug tests for cocaine in May, July, and August 2008, we agree with the court that 30 days of participation in a 90-day substance abuse program can hardly be viewed as a significant change in mother's overall circumstances. Furthermore, as the court expressed earlier in these proceedings, the gravamen of this case was not substance abuse. It was mother's severe neglect of her older children and evident mental health and parenting challenges. Given mother's inconsistent engagement in services over the course of years in both of her dependency proceedings, her failure to show sustained growth in understanding and meeting her children's needs, and her recent issues with sobriety, the juvenile court's refusal to find changed circumstances for purposes of section 388 was amply supported by the record.<sup>4</sup>

---

<sup>4</sup> Because we conclude that the juvenile court did not abuse its discretion in finding insufficiently changed circumstances to support mother's modification request in this matter, we need not address the issue of the minor's best interests.

### **III. DISPOSITION**

The judgment is affirmed.

---

Sanchez, J.

WE CONCUR:

---

Humes, P. J.

---

Banke, J.